

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 9/02/04.

The Medical Review Division's Decision of November 1, 2004, was appealed by the Requestor and subsequently withdrawn by the Medical Review Division applicable to a Notice of Withdrawal of December 6, 2004. The Requestor appealed the Decision to an Administrative Hearing because CPT code 99499 Unspecified Evaluation & Management, was billed for the attendance of the treating physician at a Required Medical Examination and is not subject to an IRO review.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that chiropractic manipulative treatment (98941), and supplies and materials (99070) rendered on 10/10/03 through 2/13/04 were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 9/20/04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

CPT code 98941 for dates of service 9/26/03 through 10/08/03 neither the Requestor nor the Respondent submitted EOBs. The Requestor submitted convincing evidence of Carrier receipt of Provider's request for EOBs in accordance with 133.308(f)(3). Therefore, these dates of service will be reviewed in accordance with Rule 134.202. Since the carrier did not provide a valid basis for the denial of this service, reimbursement is recommended in the amount of \$218.20 ($\$34.91 \times 125\% = \$43.64 \times 5 \text{ DOS}$).

CPT code 99499 for date of service 10/16/03 was denied by the Carrier as "V" – Unnecessary medical treatment with peer review. The service billed, according to documentation in the file, was for the attendance of the treating doctor at a Required Medical Examination and is not subject to an IRO review. Therefore, pursuant to Rule 126.6(c) and 134.5 (a)(1), reimbursement in the amount of \$100.00 is recommended.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees outlined above as follows:

- In accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202 (c) and 134.202(a)(4);
- Plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

This Order is applicable to dates of service 9/26/03 through 10/08/03 as outlined above in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 4th day of January 2005.

Pat DeVries
Medical Dispute Resolution Officer
Medical Review Division

PRD/prd

NOTICE OF INDEPENDENT REVIEW DECISION

SECOND AMENDED DECISION

Date: January 3, 2005

To the Attention Of:

Rosalinda Lopez
TWCC
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-16091

RE: Injured Worker:

MDR Tracking #: M5-05-1124-01
IRO Certificate #: 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- Usual notice of IRO assignment and documentation
- 9/29/04 note which served as a rationale for the disputed dates of services in question from Dr. M, D.C., the treating chiropractor
- Designated doctor evaluation report from Dr. R, M.D. dated 2/21/03
- TWCC-69 report from Dr. R, M.D. noting the claimant had an impairment rating of 15% with an MMI date of 2/21/03
- TWCC-73 report from Dr. M dated 3/26/03 recommending the claimant to be continued off work
- MRI report of the lumbar spine dated 1/3/03, this was an essentially normal exam
- MRI report of the pelvis dated 1/3/03 which was also negative.
- Several follow up evaluations from Dr. F, M.D. dated 9/30/03, 11/25/03, 2/3/04 and 3/16/04
- Multiple daily chiropractic notes during the disputed dates of service from Dr. M dated 9/26/03 through 5/12/04 and encompassed well over 45 visits
- Several further chiropractic handwritten daily notes running from 9/26/03 through 2/18/04 which contained very little information
- Notice of RME dated 10/3/03
- FCE report from Dr. B, D.C. dated 8/14/01 revealing the claimant was essentially capable of only sedentary work
- Another designated doctor evaluation report from Dr. R dated 7/26/02
- Chiropractic designated doctor evaluation report from Dr. Br, D.C. dated 1/31/02 which revealed the claimant was not yet at MMI
- New patient evaluation report from Dr. P, M.D. dated 9/17/02
- Electrodiagnostic study report of 11/12/02 revealing the claimant to mainly have lumbar plexopathy involving mainly the gluteus medius muscle
- Report from Dr. F dated 11/12/02, only the first page of this report was included for review; however, this was mainly in connection to the EMG studies which were performed.

Submitted by Respondent:

- Lumbar MRI summary of findings from Dr. G, D.C., Chiropractic Radiologist, dated 12/3/02 – the impressions of this study were no evidence of disc herniation or foraminal stenosis and no evidence of osseous pathology
- IME or RME report from Dr. Fo, M.D. dated 10/16/03 revealing that no further chiropractic treatment was medically necessary
- TWCC-73 report from Dr. Fo revealing the claimant was capable of light duty work as tolerated

Clinical History

According to the documentation submitted for review, the claimant was reportedly picking up boxes and twisted to her right when she heard or felt a pop in her low back and right hip/sacroiliac joint region. The claimant has seen multiple physicians for this problem and according to Dr. R, M.D., who in my opinion, formulated an excellent opinion regarding the diagnosis

and pain generator of the claimant, felt that the claimant had possibly sprained her sacroiliac joint as well as had facet joint aggravation specifically at the L4/5 level which was referring pain down into the right leg. It was also felt that she may have stretched her right superior gluteal nerve. The EMG study did show rather significant right superior gluteal nerve involvement. The claimant really did not have evidence of lumbar radiculopathy; however, she did have some evidence involving the lumbar plexus. The claimant has reportedly undergone chiropractic treatment from at least 3 chiropractors, the latest of which was Dr. M. Multiple reports from Dr. R, Dr. F and one report from Dr. P were reviewed. None of these reports contain any information regarding the efficacy of the chiropractic treatment. The disputed dates of service encompass 45 visits and most of the disputed dates of service are involving chiropractic manipulation.

Requested Service(s)

Chiropractic manipulative treatment (98941), and supplies and materials (99070) for disputed dates of service of 10/10/03 through 2/13/04.

Decision

I agree with the insurance carrier and find that the services in dispute were not medically necessary.

Rationale/Basis for Decision

I agree with the carrier that the chiropractic manipulations billed at 98941 as well as the service billed on 10/31/03 at 99070 were not medically necessary. The claimant has obviously undergone voluminous amounts of chiropractic care even before seeing Dr. M and yet the claimant's pain levels and objective status have remained completely unchanged according to the documentation. The chiropractic care may have provided some very temporary relief; however, the chiropractic documentation reveals that the relief is indeed very temporary and certainly not justified based on the lack of objective documentation of progress. The chiropractic care during the disputed dates of service also occurred at roughly a 3 time per week on average frequency. Despite this rather frequent amount of frequency of treatment, there was no documented evidence of a steady or sustained objective improvement. Forty-five visits of manipulation occurred during the disputed dates of service and this would be considered overly excessive given the recommendations of the highly evidence based Official Disability Guidelines. The documentation itself does not support that the care was effective at even providing subjective relief. The claimant stated that it helped; however, her own statements only a day or 2 after receiving treatment still suggested that she was in significant pain. Chiropractic treatment that provides this small amount of temporary pain relief would not be considered reasonable or medically necessary at 3 years post injury. There was no evidence that the claimant sustained any type of objective improvement such as strength from the services provided. There was also no evidence that the claimant was better able to retain any form of employment as a result of the disputed treatment. The claimant in my opinion had questionable decreases in pain when looking at the documentation. The treatment has far exceeded the recommendations of the highly evidence based Official Disability Guidelines given the nature and extent of this type of injury. The chiropractic notes when compared to Dr. F notes during the same correlating time period revealed no change in the claimant's condition. In other words, Dr. F notes from

September 2003 through March 2004 when he periodically saw the claimant indicate absolutely no change in the claimant's status. There was also no mention in any of the documentation from Dr. Fo , Dr. F , Dr. R or Dr. P of the efficacy of the chiropractic care. There was no mention at all in any of this other documentation that the chiropractic care was having any type of even moderate benefit on the claimant's status.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 3 day of January 2005.

Signature of IRO Employee: